



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 9<sup>th</sup> day of June, 2003

**Applications of**

**CORPORATE AIRLINES, INC.  
OZARK AIRLINES, INC.  
d/b/a GREAT PLAINS AIRLINES  
AMERICAN TRANS AIR, INC.  
MIDWEST EXPRESS AIRLINES, INC.  
AIRTRAN AIRWAYS, INC.  
US AIRWAYS, INC.**

For exemptions from 14 C.F.R. Part 93,  
Subparts K and S, pursuant to 49 U.S.C.  
§ 41718(b), Special rules for Ronald Reagan  
Washington National Airport (within-perimeter slot  
exemptions)

**Served: June 9, 2003**

**Docket OST-2000-7182**

**ORDER TO SHOW CAUSE**

**SUMMARY**

By this order, the Department tentatively: (a) grants the request of US Airways, Inc., to permit it to operate services authorized by Department Order 2003-1-16 for Corporate Airlines, Inc., at Ronald Reagan Washington National Airport (hereafter "DCA") for the period July 6, 2003, through October 25, 2003, or until Corporate inaugurates service, whichever comes first; and (b) denies the request of US Airways for temporary authority to permit it to operate services between DCA and Mobile, Alabama, Pensacola, Florida, or Savannah, Georgia, in lieu of services authorized by Department Order 2003-1-16 for AirTran Airways, Inc., to serve different communities to DCA. Objections to our tentative decisions are due within five days of the service date.

**BACKGROUND**

Under the provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR-21) on January 22, 2003, the Department issued Order 2003-1-16 that, among other things, awarded four DCA slot exemptions to AirTran for new services to one or more communities in Florida, comprised of Fort Lauderdale, Fort Myers, or West

Palm Beach.<sup>1</sup> The Department also awarded Corporate Airlines two DCA slot exemptions to provide nonstop service to any of the communities to which it has proposed service, comprised of Wilmington, Fayetteville, or Jacksonville, North Carolina. The order required that AirTran and Corporate institute their respective new DCA services within 90 days of the January 22, 2003, service date of the order, or by April 23, 2003. By Order 2003-4-13, the Department granted the request of AirTran for an extension until May 6, 2003. The Department also decided, *sua sponte*, to grant the same relief to Corporate in the interest of equity.

In a separate but related issue, by action dated April 23, 2003, the Federal Aviation Administration waived the use-or-lose requirements for slot and slot exemption operations at the high-density airports for the period March 19, 2003, through April 30, 2003.<sup>2</sup> The FAA took this action, in part, because the Air Transport Association of America (ATA) and individual airlines, such as US Airways, had requested the opportunity to temporarily operate services at levels lower than use-or-lose requirements at the high-density airports, including DCA, as a result of decreased passenger demand, increased operating costs, and other impacts on the airline industry related to the military action in Iraq. The FAA had also waived minimum usage requirements for the period May 1, 2003, through October 25, 2003, provided that carriers temporarily return to the FAA any unused slot or slot exemption.

In order to harmonize its policies with the FAA action waiving the use-or-lose requirement, the Department has likewise applied the waiver of the use-or-lose requirement to the start-up provisions of Order 2003-4-13 for the operations authorized for AirTran or Corporate.

By letter dated May 9, US Airways noted that Corporate had not inaugurated its proposed DCA service within the time frame specified by Order 2003-4-13. US Airways asserted that it stood “ready, willing, and fully committed” to inaugurate any of the service awarded to Corporate. US Airways stated that it was prepared to serve one or more of Corporate’s proposed markets “as early as July 6 ... and either until such time as Corporate is able to initiate service using these exemption slots or through October 26, 2003.” In a separate letter dated May 21, US Airways contended that AirTran had also failed to inaugurate the service awarded by Order 2003-4-13, and that US Airways was prepared to implement service in markets (different from those authorized by Order 2003-4-13) proposed by US Airways<sup>3</sup> “on May 31, 2003, or with [sic] seven business days of the Department’s awarding them to US Airways.”

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<sup>1</sup> Applications for six available DCA slot exemptions were filed by Corporate Airlines, Inc.; Ozark Airlines d/b/a Great Plains Airlines; American Trans Air, Inc.; Midwest Express Airlines, Inc.; US Airways, Inc.; and AirTran Airways, Inc.

<sup>2</sup> Published in the Federal Register on April 23, 2003, 68 FR 20040.

<sup>3</sup>US Airways had proposed services to Savannah, GA, Mobile, AL, and Pensacola, FL.

## **TENTATIVE DECISION**

We have tentatively decided to: (a) grant US Airways' request to permit it to operate the services authorized for Corporate for a limited period; and (b) deny US Airways' request for temporary authority to operate services between DCA and Mobile, Alabama, Pensacola, Florida, or Savannah, Georgia, by using slot exemptions awarded by Order 2003-1-16 to AirTran to serve other markets.

AIR-21 allowed the Secretary to grant 12 additional flights (six round trips) within the perimeter, and prescribed in detail the criteria that the Department was to use in awarding slot exemptions. Pursuant to those statutory criteria, the slot exemptions must be used to serve the specific community or communities for which they were awarded. The decisions made in Order 2003-1-16 to award slot exemptions to Corporate for North Carolina service and to AirTran for Florida service were made after developing a complete evidentiary record in the case, including initial applications from six carriers and a round of reply comments.

US Airways' request for temporary authority to serve any of Corporate's proposed communities is consistent with that objective. We therefore propose to grant US Airways temporary authority to serve Wilmington, Fayetteville, or Jacksonville, North Carolina, until October 25, 2003, *or* until Corporate inaugurates the DCA operations contemplated by Order 2003-1-16, whichever comes first. If Corporate seeks to inaugurate its DCA authorized operations prior to October 26, 2003, it must give at least 30 days' advance notice of the date it on which it intends to implement such operations, and we would require Corporate to inaugurate such service on that date.<sup>4</sup> For its part, US Airways would have the opportunity to test one of these markets, and, if its service is successful, could continue to serve it by using some of its existing DCA slot holdings.

We tentatively find that our limited and temporary action best serves the public interest by allowing an authorized community to receive new air service sooner.

US Airways' request for temporary usage of AirTran's slot exemptions is significantly different from its request for Corporate's authority. Unlike its request for short-term use of Corporate's authority, US Airways here seeks to attain authority to serve different markets from those authorized by Order 2003-1-16. As we indicated earlier, the services authorized by Order 2003-1-16 were awarded after a full proceeding, and the merits of the service that US Airways now seeks to implement were fully addressed in Order 2003-1-16. We are not now able to amend that order and authorize what would be very short-term, temporary service, without giving full due process to all other applicants in the original case. Thus, we have tentatively decided to deny US Airways' request to serve markets that were not authorized by Order 2003-1-16.

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<sup>4</sup> Corporate must file a copy of its notice in Docket OST-2000-7182 with the Documentary Services and Media Management Division, M-30, Room PL-401, Department of Transportation, 400 7<sup>th</sup> Street S.W., Washington, DC 20590, and serve a copy on US Airways.

Our tentative decision here also contemplates that if either Corporate or AirTran fails to commence its respective DCA operations authorized by Order 2003-1-16 in compliance with the use-or lose requirements, a proceeding to reallocate the resulting unused slot exemptions would be automatically instituted.

We will give interested parties five days from the service date of this order to show cause why these tentative findings should not be made final.

This order is issued under authority delegated in 49 C.F.R. § 1.56(a).

**ACCORDINGLY,**

1. The Department tentatively grants temporary slot exemptions from 14 C.F.R. Part 93, Subparts K and S, to US Airways, Inc., (two slot exemptions to serve Wilmington, Fayetteville, or Jacksonville, North Carolina) to enable US Airways to conduct operations, subject to the provisions of Ordering Paragraphs 4 and 7, through October 25, 2003, originally authorized for Corporate Airlines, Inc., by Order 2003-1-16 at Ronald Reagan Washington National Airport;
2. The Department tentatively denies the request of US Airways, Inc., for the temporary grant of slot exemptions from 14 C.F.R. Part 93, Subparts K and S, originally authorized for AirTran Airways, Inc., by Order 2003-1-16 at Ronald Reagan Washington National Airport;
3. Corporate Airlines and AirTran Airways must commence their respective DCA operations authorized by Order 2003-1-16 after reinstatement of the Federal Aviation Administration's use-or-lose requirements. If either Corporate Airlines or AirTran Airways fails to commence its respective DCA operations authorized by Order 2003-1-16, the Department will institute a new proceeding to reallocate any such slot exemptions;
4. In order to inaugurate the operations authorized by Order 2003-1-16 prior to October 26, 2003, Corporate Airlines must provide at least 30 days' written advance notice in this docket of the date it will inaugurate its authorized DCA operations. We will require Corporate to inaugurate service on that date. Should Corporate Airlines inaugurate the DCA operations authorized by Order 2003-1-16 prior to October 26, 2003, the temporary authority granted in Ordering Paragraph 1 of this order will cease to be effective;
5. Unless otherwise authorized by the Federal Aviation Administration's Slot Administration Office, US Airways must operate only the operating times and slot exemption numbers authorized to Corporate Airlines by the terms of Ordering Paragraph 3 of Order 2003-1-16 for the operations authorized by Ordering Paragraph 1 of this order. The FAA will assign slot exemption numbers, effective dates, and operating times consistent with statutory limitations;

6. We direct any interested persons having objections to this order to file such objections no later than five days from date of service of this order;<sup>5</sup>

7. We will afford full consideration to the matters and issues raised in any timely and properly filed objections before we take further action.<sup>6</sup> If no objections are filed, all further procedural steps will be deemed waived and this order shall become effective on the sixth day after its service date;

8. This docket will remain open until further order of the Department;

9. The authorities granted under these exemptions are subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use-or-lose requirements; and

10. We will serve this order on all interested parties and the Federal Aviation Administration Slot Administration Office.

By:

**MICHAEL W. REYNOLDS**  
Acting Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this document will be made available on the World Wide Web at:  
<http://dms.dot.gov/>*

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<sup>5</sup> Objections should be filed with the Documentary Services and Media Management Division, M-30, Room PL-401, Department of Transportation, 400 7<sup>th</sup> Street S.W., Washington, DC 20590. Questions regarding filings in response to this order may be directed to Dennis J. DeVany at (202) 366-1061.

<sup>6</sup> Since we are providing for the filing of objections to this order, we will not entertain petitions for reconsideration.